Circuit Court for Baltimore City
Case Nos. T23004004 and T23004005

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1628

September Term, 2023

In Re: Ga. G. & Gi. G.

Wells, C.J.
Tang,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: May 31, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, B.M. ("Mother"), challenges a judgment of the Circuit Court for Baltimore City, sitting as a juvenile court, terminating her parental rights concerning two of her children. For the reasons set forth below, we shall vacate the order terminating Mother's parental rights and remand for further findings in accordance with this opinion.

BACKGROUND

Mother has four children. She has a daughter born in 2015, a son born in 2017, and male and female twins named Gi. G. and Ga. G. (collectively "the Twins"), who were born in December 2019. The Twins are half-siblings to their older sister and brother, whom we shall call "Half-Sister" and "Half-Brother." The Twins' father died before they were born. This appeal is from an order terminating Mother's parental rights to the Twins.

Shelter Care Order and CINA Stipulation

On January 22, 2020, the Baltimore City Department of Social Services ("Department") filed a Petition for Shelter Care,[1] seeking temporary custody of the Twins and Half-Brother.[2] In support of the petition, the Department alleged that in October 2019, while pregnant with the Twins, Mother was observed sleeping outside with Half-Brother and begging for food. She refused to go to a shelter at that time. When the Twins were born, one suffered from low blood sugar and struggled to gain weight. The Twins were "not properly fed" despite receiving assistance from the hospital and the Department.

[1] "'Shelter care' means a temporary placement of a child outside of the home at any time before disposition" of a Child in Need of Assistance petition. Courts and Judicial Proceedings Article ("CJP") § 3-801(bb).

[2] Half-Sister was voluntarily placed in the care of Great Grandmother (*infra*) at the age of two months and has lived with her continuously since that time.

Mother had untreated mental health issues and experienced chronic homelessness, and her current housing situation was "unstable." She had "extensive" prior involvement with the Department but had been unable to "ameliorate" the Department's "safety concerns." The Department further alleged that the Twins had medical needs which were not being met, and that they were "susceptible to failure to thrive."

Following a shelter care hearing on January 22, 2020, the court granted temporary custody of the Twins and Half-Brother to the Department, and they were placed in the foster care home of "Mr. H." and "Ms. H." Shortly after that, Half-Brother was removed from the foster care home and placed in a different home because of reports that he was "kicking, biting, and pushing" the Twins and other members of the H. household.

On October 15, 2020, the court held an adjudication and disposition hearing during which the parties stipulated to certain facts and agreed to the disposition. Based on the parties' agreement, the court found the children to be CINA ("Children in Need of Assistance")[3] and placed them in the care and custody of the Department.

Permanency Plan for Placement with Relative

On February 8, 2021, the Twins and Half-Brother were placed in the home of their maternal great aunt ("Great Aunt") at Mother's request. At a permanency planning review hearing on March 22, 2021, the parties stipulated that (1) the children should remain in the

[3] A "child in need of assistance" is "a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." CJP § 3-801(f).

custody of the Department; (2) Mother was not working with the Department toward reunification; (3) Mother wanted Great Aunt to have custody and guardianship of the children; and (4) the children were "doing well" with Great Aunt. Following the hearing, the court found the stipulated facts to be sustained. With the parties' agreement, the court ordered that the permanency plan be changed from reunification with Mother to placement with a relative for custody and guardianship.

In April 2021, after the Twins and Half-Brother had been in Great Aunt's custody for about two months, Great Aunt requested that they be removed. According to Department notes, Great Aunt was "no longer willing to be a resource" "[d]ue to the behaviors of [Half-Brother] and lack of assistance from extended family members[.]" The Twins were placed back in the foster home of Mr. and Ms. H. Half-Brother went to a different foster care home.

At a review hearing on May 13, 2021, the parties stipulated that the children were "doing well in their foster care placements." The parties also stipulated that the Department had made reasonable efforts to accomplish the permanency plan of placement with a relative for custody and guardianship. Consistent with the parties' joint recommendation, the court ordered that the permanency plan remain unchanged.

In various Department notes, the caseworkers assigned to the Twins' case expressed that while the Twins' current plan was custody and guardianship by a relative, no relatives were willing to provide care; the previous relative, Great Aunt, had "changed her mind." Accordingly, the Department intended to request that the Twins' plan be changed to custody and guardianship/adoption by a non-relative.

On March 3, 2022, during a phone call with the caseworker, Mother asked that the Twins be placed with Mother's grandmother ("Great Grandmother"), who had just moved into a four-bedroom townhouse.[4] A caseworker performed a health assessment of Great Grandmother's new home the same day and found it to be appropriate. Later that month, the Department held a Family Involvement Meeting ("FIM")[5] to discuss the potential placement of the Twins with Great Grandmother. But counsel for the Twins did not agree to move the Twins.

Twins' Permanency Plan Changed to Placement with Non-Relative

At the next review hearing, which began on June 13, 2022, and was continued to and concluded on August 1, 2022, the Twins' permanency plan was changed, over Mother's objection, from placement with a relative to placement with a non-relative concurrent with placement with a non-relative for adoption. Half-Brother's permanency plan continued to be placement with a relative for custody and guardianship, with the court urging the Department to achieve placement with Great Grandmother.

In its written order, the court noted that while Great Grandmother had been cleared as a resource, the Department had the following concerns: (1) the "aggressive behavior of [Half-Brother] toward [the Twins], were they to live in the same home"; (2) because the

[4] In 2020, Great Grandmother expressed a willingness to serve as a resource for the children, but her former residence did not have adequate room. She had been looking for a "bigger place" with "more room" to accommodate the children.

[5] A Family Involvement Meeting (now known as a "Family Team Decision Meeting" or "FTDM") is a meeting with family members and chosen supports to make key child welfare decisions, including placement changes and permanency plans.

Twins had not had "significant contact" with Great Grandmother or Half-Brother during the pendency of the CINA case, the Department "would need to see several visits that demonstrate compatibility of the arrangement[;]" and (3) the Department had concerns that Mother would be living with Great Grandmother because Mother's name had been included on the application for Great Grandmother's residence.

The court added that the Twins had been living with Mr. and Ms. H. since they were six weeks old, except for a brief period when they were placed with Great Aunt. Mr. and Ms. H. were willing to receive custody/guardianship of the Twins and perhaps adopt them. The court ordered that the permanency plan be changed to placement with a non-relative for custody and guardianship concurrent with placement for a non-relative for adoption. Counsel for Mother did not dispute that the Department had made reasonable efforts to place the Twins with a relative.

Termination of Parental Rights

On January 5, 2023, the Department filed a petition seeking termination of Mother's parental rights and granting guardianship of the Twins to the Department, with the right to consent to adoption or long-term care short of adoption. The court held a contested hearing ("TPR hearing") over six days: July 24, 2023; July 25, 2023;[6] July 31, 2023; August 1, 2023; August 10, 2023; and August 30, 2023.

The Twins were three years old at the time of the hearing. The court heard testimony from two Department caseworkers assigned to the case, Mother, Ms. H., and Great

[6] At the outset of the second day of the hearing, the court granted a postponement because Mother had a health-related emergency.

Grandmother. The court admitted the record in the CINA case, caseworker notes from the Department's file, and medical records of Mother and the Twins. The following summarizes the relevant evidence introduced at the hearing.

Department Witnesses

The Department called two caseworkers who had been assigned to the case. Pensee Saiyard-Tambe was the assigned caseworker from January 22, 2020, to October 2020. Yolanda Gamble was assigned to the case in December 2020 and remained the assigned caseworker up through and including the hearing.

When Ms. Saiyard-Tambe handled the case, Mother missed appointments to discuss and sign a service agreement and did not attend the planned FIMs. After Ms. Gamble took over the case, Mother still had not signed the service agreement and missed two other scheduled FIMs. The evidence further established that it was difficult for the caseworkers to contact Mother. Mother communicated with the Department primarily through her attorney.

The Department made efforts to facilitate visits between Mother and the Twins. After the shelter care hearing in January 2020, the Department scheduled a visit for February 6, 2020, which was cancelled because the caseworker was unavailable. Three more visits were scheduled in February 2020. The first was on February 14 when Mother appeared. The next scheduled visit on February 18 resulted in the Department and the children waiting 35 minutes for Mother to show up. Since Mother was late and had not contacted the Department, the children were sent home. At the next scheduled visit on February 25, Mother did not show up.

The Department scheduled a visit for March 17, 2020, but it was cancelled because of the COVID-19 pandemic. Between March and September 2020, Mother was offered weekly visitation via video call because of the ongoing pandemic. Mother told the caseworker that she did not have time to participate in virtual visits.

In-person visits resumed in September 2020. The caseworker notes indicate that the caseworker contacted Mother in October 2020 to schedule visits with the children, but the visits did not occur. Mother told the caseworker that she did not understand why she had to visit the children when, according to Mother, they were going to be placed with Great Aunt.

Between December 2020 and August 2023, Mother contacted the Department approximately six times. To the Department's knowledge, Mother never sent cards or gifts to the Twins and provided no financial support for their care.

The Department investigated three relative placement resources for the Twins: Mother's mother ("Grandmother"), Great Aunt, and Great Grandmother. The Department's investigation revealed that Grandmother had previous involvement with Child Protective Services ("CPS") for neglect. Grandmother was asked to provide more information, which may have "restored" her as a possible placement for the Twins, but she did not respond. Great Grandmother was cleared personally as a placement resource in 2020, but her residence at the time did not have adequate room for the Twins.

As mentioned, on February 8, 2021, the Twins and Half-Brother were placed with Great Aunt. The caseworker's note indicated that at a monthly home visit on March 23, 2021, Great Aunt advised the Department that Mother had visited the children twice, each

visit lasting about an hour. Great Aunt had reported that Mother became "irritated with the [T]wins easily and does not have the patience for them."

At Mother's request, the Twins and Half-Brother were removed from Great Aunt's home in April 2021. According to the Department, Great Aunt was not able to handle the "problematic" behavior of Half-Brother, who was "fighting with the [T]wins" and was "not listening." The Twins were returned to the home of Mr. and Ms. H. while Half-Brother went to a different foster home. Ms. Gamble testified that the Twins were "happy" to be returned to the H. home and reacted "fine" to leaving Great Aunt's house.

In March 2022, Great Grandmother advised the Department that she had recently moved to a larger home to be considered a placement resource for the Twins and Half-Brother. When asked how she would manage Half-Brother's aggressive behavior toward the Twins, Great Grandmother said she had never observed such behavior but felt she could handle it.

Great Grandmother participated in three Department-facilitated visits with the Twins in 2022. Mother accompanied Great Grandmother to a visit on September 16, 2022. Great Aunt, Half-Sister, and Half-Brother were also present. The caseworker's notes indicate that it was Mother's first visit with the Twins in two years. Despite the family being half an hour late for the visit, the visit "went well[.]"

Half-Brother was eventually placed with Great Grandmother at the beginning of 2023. The Twins were not placed with Great Grandmother because the Department was concerned about the ability of Half-Brother to "interact with [the Twins] without incident."

According to the Department, Mr. and Ms. H. take "excellent care" of the Twins, and there were no concerns about their health and well-being. The Twins have a good relationship with their foster parents and siblings.

Mother's Testimony

Mother gave her present address and said she had lived there for about a year. She said that before that time, she lived in an apartment with the Twins' father ("Father"). After Father died, Mother was forced to move out because she was not on the lease.

Mother testified that no one from the Department "kept in contact and [she] didn't keep in contact either." She denied having ever been invited to a family meeting at the Department. She said that she had the caseworker's phone number but that "no one answers" when she calls. When asked when she had last called the caseworker, she contradicted her earlier testimony and said that she had not called the caseworker because she did not have their number. Mother claimed that the Department switched caseworkers "[e]very other month[,]" and said that she "can't keep up with everybody."

Mother testified that she calls the Twins "all the time." She had last spoken to them about a week before trial via a FaceTime call facilitated by Ms. H. The last time Mother visited them was about a year before trial (apparently, referring to September 16, 2022) in a "group visit" for about 30 minutes.

Mother testified that during the time the Twins were placed with Great Aunt, she saw the Twins "a lot[.]" Mother explained that Great Aunt "gave [the children] back because she had no help." Mother testified that she helped "a lot" by giving Great Aunt money to spend on the children, but Great Aunt ended up spending the money on herself.

Mother understood that she could participate in visits with the Twins through the Department but said that each time she made a request to the Department, nothing happened, "unless [the Department] want[ed] it to happen." She said her attorney had called the Department to arrange for a visit, but the Department "want[ed] to do it when they want[ed.]" Mother said she asked her attorney to request the court's intervention to schedule visits, but "nobody did [any]thing."

Mother conceded that she did not have a bond with the Twins. She blamed the lack of a bond on the Department for taking the Twins from her and not allowing her to visit. Mother told the court that she wanted the Twins to be placed with Great Grandmother, who also had custody of Half-Brother and Half-Sister. Mother described the sibling relationships as "perfect[.]" Mother stated she had no intention of living in Great Grandmother's home.

Foster Mother's Testimony

The Twins' foster mother, Ms. H., testified that the Twins have been in her care since January 2020, except for two months in 2021, when they were placed with Great Aunt. Ms. H. and Mr. H. have four children who live at home. The Twins call their foster parents "Mom" and "Dad." They attend daycare during the day and engage in activities such as ballet and soccer. They participate in family outings and vacations with the rest of the H. family.

Ms. H. testified that when the Twins were younger, Mother called "a couple of times" and asked to talk to them. When Mother did not have a phone, she contacted Ms. H. through Facebook. According to the caseworker's notes in 2021, Ms. H. advised that

Mother had "facetimed" with the children "a few times[.]" In addition, Mother contacted Ms. H. through Facebook three times. On one such occasion, Mother asked to speak with the Twins and engaged in a brief video chat with them. She then asked Ms. H. for money. On the other two occasions, Mother only asked Ms. H. for money.

Ms. H. testified that in 2022, Mother contacted her about the Twins five or six times. In 2023, Mother contacted Ms. H. about the Twins two or three times, with the last contact in April 2023 through Facebook.

Great Grandmother's Testimony

Great Grandmother testified that she stepped forward as a potential placement for the Twins and Half-Brother when they were first taken into care in 2020. At that time, she was told she needed a larger home. She moved into a larger house in February 2022 and was prepared to have the Twins placed with her. Great Grandmother had participated in three visits with the Twins since they were removed from Great Aunt's care in April 2021.

When Great Aunt had custody of the Twins and Half-Brother in 2021, Great Grandmother saw them every weekend. During those visits, she did not observe Half-Brother behaving aggressively toward the Twins. On cross-examination, Great Grandmother testified that Half-Brother got into trouble at school for hitting the teacher. He was also removed from summer camp because he hit or "tapped" a teacher.

Court's Ruling

The court terminated Mother's parental rights. In a written opinion, the court summarized the procedural history and made factual findings upon considering the factors

listed in Maryland Code (1984, 2019 Repl. Vol.), § 5-323(d)(1)-(4) of the Family Law Article ("FL"). The findings under each statutory factor are summarized as follows:

FL § 5-323(d)(1)(i): The court found that a "myriad of services" were offered to Mother, including access to food, baby and household supplies, education regarding "proper feeding techniques for premature infants[,]" and mental health services. The court found that the services were "not utilized or accessed" by Mother.

FL § 5-323(d)(1)(ii): The court found that the Department made meaningful efforts to facilitate reunification between Mother and the Twins. These efforts included attempts to place the Twins with relatives. But the court found that Mother's "repeated failures to maintain consistent contact with the agency both thwarted these efforts and delayed reunification efforts." The court further found that Mother had not made herself available for the reunification efforts in well over two years.

The court recounted Mother's failure to avail herself of Department-facilitated visits with the Twins. It found that "[a]fter placing [the Twins] in shelter care on January 22, 2020, a visit was scheduled for February 6, 2020. This visit was cancelled due to Mother running late. Another visit occurred on February 14, 2020, the first and only complete visit between Mother and [the Twins]. On February 18, 2020, "a scheduled visit was again canceled because Mother was again late."

It further found that "[d]uring the COVID-19 pandemic, [the Department] offered virtual visits from March 2020 until September 2020, but Mother indicated that she had no time to attend." "In September 2020, [the Department] notified Mother that in-person visits

could occur, but Mother did not see [the Twins] until September 2022, almost two years after the lifting of restrictions on in-person visits." Nor did Mother participate in the FIMs.

Contrary to Mother's assertion that the Department failed to seek placement with relatives as required, the court found that it did seek such placement. The Department conducted placement investigations of Great Aunt and Great Grandmother. The court found that placement with Great Aunt failed because she did not receive anticipated support from the family and did not request support from the Department. The court noted that the Department had concerns about Mother possibly living with Great Grandmother. Although Mother did not plan to live in the home, Half-Brother's behavior "continued to be a concern because he had previously been placed in a separate foster home from [the Twins] because of his aggression towards them. As a result, [the Twins] could not be placed with [Great Grandmother]."

FL § 5-323(d)(1)(iii): "Neither party offered or presented a social services agreement, and therefore, the [c]ourt f[ound] that Mother never entered into a service agreement with [the Department]."

FL § 5-323(d)(2)(i): The court found that Mother had not been in regular contact with the Twins. It found that "over the course of three years, Mother successfully participated in one visit . . . which was originally scheduled for only [Great Grandmother] because of a lack of participation by Mother." It further found that Mother "failed to make contact or ask to see" the Twins despite having the foster family's contact information and the ability to reach Ms. H. on Facebook. In addition, Mother had "consistently failed to attend family involvement meetings."

FL § 5-323(d)(2)(ii): The court found that there was "no evidence that Mother ha[d] made any meaningful financial contributions to the support and care of [the Twins]."

FL § 5-323(d)(2)(iii): The court did not find this factor relevant as no party alleged the presence of any disability that would make Mother consistently unable to care for the Twins' immediate or ongoing physical or psychological needs for long periods.

FL § 5-323(d)(2)(iv): The court noted that Mother did not want custody of the Twins as "evidenced by her behavior throughout the hearing, her failure to seek mental health services, and her failure to secure consistent housing. Mother consistently arrived late for court hearings and appeared disinterested, falling asleep during several court proceedings."

FL § 5-323(d)(3)(i): The court found that there was no evidence of abuse or neglect.

FL § 5-323(d)(3)(ii): The court did not find this factor relevant as neither Mother nor the Twins tested positive for a drug as evidenced by a toxicology test.

FL § 5-323(d)(3)(iii): The court found that Mother "failed to properly nourish" the Twins before they were removed from her care, despite being offered assistance through the Department and the hospital. Based on this finding, the court found that Mother subjected the Twins to "the potential of chronic neglect."

FL § 5-323(d)(3)(iv): The court found no evidence that Mother had been convicted of any crimes listed under the statute.

FL § 5-323(d)(3)(v): The court found no evidence that Mother had lost the rights to any of her other children.

FL § 5-323(d)(4)(i): The court found that the Twins "do not have a meaningful tie with Mother. Mother has not been in contact with [the Twins] in over two years and ceased FaceTime calls with [them] in 2020." The court further found that the Twins had lived apart from Half-Brother for almost all their lives, except for the two months they were placed with Great Aunt. The court found that the Twins "have virtually no contact with [Half-Brother]." By contrast, the court found that the Twins had "grown very attached" to the H. family.

FL § 5-323(d)(4)(ii): The court found that the Twins have "adjusted extremely well to their current community, home, and placement" with Mr. and Ms. H. The court found that the Twins had "strong attachments" with Mr. and Ms. H., with whom they had lived with for all but two months of their lives. The court noted that the Twins refer to the H.'s as "Daddy" and "Mom," and that they were "bonded with" the H.'s four children.

FL § 5-323(d)(4)(iii): The court found that "given the limited contact [the Twins] have had with Mother since birth, it is extraordinarily unlikely" that they would have "strong feelings about the severance of the parent-child relationship. Mother wants [the Twins] to be raised by [Great Grandmother]. There is no relationship between [the Twins] and Mother."

FL § 5-323(d)(4)(iv): The court found that "terminating Mother's rights would not have a meaningfully negative impact on [the Twins'] well-being." The court noted that the Twins had never lived with Mother, and the H.'s home is the only one that the Twins have ever known. It found that Mother had "never been a significant source of support for [the

Twins], financial or otherwise." Accordingly, the court found that "the likely impact of terminating parental rights is beneficial to the [Twins] well-being."

After considering each factor, the court found that "exceptional circumstances exist to overcome the presumption that [the Twins'] best interest [is] served by continuance of the parental relationship."

We will include additional facts in our discussion of the issues.

STANDARD OF REVIEW

When reviewing a juvenile court's decision to terminate parental rights, "Maryland appellate courts apply three different but interrelated standards of review[.]" *In re Adoption/Guardianship of C.E.*, 464 Md. 26, 47 (2019) (citation omitted). *First*, the juvenile court's factual findings are reviewed for clear error. *In re Adoption/Guardianship of Amber R.*, 417 Md. 701, 708 (2011). In evaluating the court's findings of fact, we must give "the greatest respect" to the court's opportunity to view and assess witness testimony and evidence. *Id.* at 719. "A trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (citation omitted).

Second, we determine "without deference" whether the court erred as a matter of law. *In re Adoption/Guardianship of H.W.*, 460 Md. 201, 214 (2018). If error is found, "further proceedings are ordinarily required unless the error is harmless." *Id.*

Finally, we evaluate the court's ultimate decision for abuse of discretion. *Id.* A decision will be reversed for abuse of discretion only if it is "well removed from any center

mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Yve S.*, 373 Md. 551, 583–84 (2003) (citation omitted).

DISCUSSION

"In deciding whether parental rights should be terminated, the juvenile court's overriding consideration is the best interest of the child." *In re: K.H.*, 253 Md. App. 134, 158 (2021) (citation omitted). Although "[t]he law presumes that a child's best interests are served by maintaining a parental relationship between the child and the child's parents," the presumption may be overcome if the Department establishes, by clear and convincing evidence, (1) "that the parent is unfit[,]" or (2) "that exceptional circumstances exist that would make continuing the parental relationship detrimental to the child's best interests." *Id.* (citing *C.E.*, 464 Md. at 50).

Here, the court terminated Mother's parental rights upon a finding of exceptional circumstances. "The exceptional circumstances alternative is meant to cover situations . . . in which a child's transcendent best interests are not served by continuing a relationship with a parent who might not be clearly and convincingly unfit." *In re Adoption of K'Amora K.*, 218 Md. App. 287, 310 (2014) (footnote omitted). "[E]xceptional circumstances can exist where a parent's behavior might not necessarily rise to the level of unfitness, but nonetheless contributes to a broader picture that could justify termination[.]" *Id.* at 306 (emphasis deleted).

To determine whether termination of parental rights is in the child's best interest, the court must consider the statutory factors set forth in FL § 5-323(d)(1)-(4). *C.E.*, 464 Md. at 50. The statute is divided into four subparagraphs of factors that the court must

assess in evaluating exceptional circumstances that would suffice to rebut the presumption for continuing the parental relationship and justify the termination of that relationship. *Id*. at 50-51. In pertinent part, FL § 5-323(d) provides:

> [I]n ruling on a petition for guardianship of a child, a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent's rights is in the child's best interests, including:
>
> (1)(i) all services offered to the parent before the child's placement, whether offered by a local department, another agency, or a professional;
>
> (ii) the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent; and
>
> (iii) the extent to which a local department and parent have fulfilled their obligations under a social services agreement, if any;
>
> (2) the results of the parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests for the child to be returned to the parent's home, including:
>
> (i) the extent to which the parent has maintained regular contact with:
> 1. the child;
> 2. the local department to which the child is committed; and
> 3. if feasible, the child's caregiver;
>
> (ii) the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so;
>
> (iii) the existence of a parental disability that makes the parent consistently unable to care for the child's immediate and ongoing physical or psychological needs for long periods of time; and
>
> (iv) whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent within an ascertainable time not to exceed 18 months from the date of placement unless the juvenile court makes a specific finding that it is in the child's best interests to extend the time for a specified period;

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

(ii) 1. A. on admission to a hospital for the child's delivery, the mother tested positive for a drug as evidenced by a positive toxicology test; or

B. upon the birth of the child, the child tested positive for a drug as evidenced by a positive toxicology test; and

* * *

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence against:
   A. a minor offspring of the parent;
   B. the child; or
   C. another parent of the child; or
2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and

(4)(i) the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly;

(ii) the child's adjustment to:

1. community;
2. home;
3. placement; and
4. school;

(iii) the child's feelings about severance of the parent-child relationship; and

> (iv) the likely impact of terminating parental rights on the child's well-being.

FL § 5-323(d).

"[I]n cases where parental rights are terminated, it is important that each factor be addressed specifically not only to demonstrate that all factors were considered but also to provide a record for review of this drastic measure." *In re Adoption/Guardianship of C.A. and D.A.*, 234 Md. App. 30, 48-49 (2017) (citation omitted). "[T]he court must weigh all of the statutory factors together, without presumptively giving one factor more weight than another." *In re Adoption/Guardianship of Jasmine D.*, 217 Md. App. 718, 737 (2014). While not every statutory factor may apply or be found in every case, *id*., the court "must work through the statutory factors in detail . . . and explain with particularity how the evidence satisfied them and how the court weighed them[.]" *K'Amora K.*, 218 Md. App. at 304. "So important are these statutory considerations that, on review, we cannot be left to speculate as to whether the trial court has fulfilled its obligations. . . . Indeed, in considering each factor under [FL § 5-323], the court must even make findings of 'the non-existence of facts where appropriate[.]'" *In re Adoption/Guardianship No. 95195062/CAD in Cir. Ct. for Balt. City*, 116 Md. App. 443, 457 (1997) (citation omitted).

The court must further "determine expressly whether those findings suffice either to show an unfitness . . . or to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child[.]" *In re Adoption of Ta'Niya C.*, 417 Md. 90, 102 (2010) (citation omitted).

Mother contends that the court's order terminating her parental rights to the Twins must be reversed because (1) some of the court's findings under FL § 5-323(d) were clearly erroneous, and (2) the court failed to articulate why the findings constituted "exceptional circumstances" that would make continuing the parental relationship detrimental to the children's best interests. In significant part, we agree.

We shall vacate the court's judgment and remand for further findings for two reasons. *First*, some of the court's statutorily required findings are either clearly erroneous or lacking. *Second*, the court did not explain how it weighed the evidence to conclude that exceptional circumstances exist sufficient to rebut the presumption favoring the parental relationship.

I.

FACTUAL FINDINGS

Preliminarily, Mother challenges two findings by the court regarding the TPR hearing. She claims that these erroneous findings show that the court viewed the case through "a truncated and distorted lens." *First*, she claims that the court erroneously stated that the TPR hearing occurred over eight months. In its written opinion, the court appears to say that the TPR proceeding took place during "several hearings occurring over the course of approximately eight months, with specific hearing dates as follows: January 24, 2023; January 25, 2023; January 31, 2023; August 1, 2023; August 10, 2023; and August 30, 2023." Apparently, the court confused "January" for "July" (when the TPR hearing began) and calculated eight months from January instead of July. This *de minimis* error was inconsequential to the court's decision to terminate Mother's parental rights.

Second, Mother claims that the court erred in finding that she "consistently arrived late for court hearings and appeared disinterested, falling asleep during several of the proceedings."[7] We perceive no error. On the first day of the hearing (July 24, 2023), Mother said she did not want to "do this anymore" and wanted to leave. The court noted that Mother "[c]learly doesn't want to be here." At another point, the court noted that Mother had been asleep for about 20 minutes. On the fourth day of the hearing (August 1, 2023), Mother attempted to leave the courtroom during Ms. Gamble's testimony. In an outburst, Mother accused Ms. Gamble of "f***ing lying" and said that she wanted to leave. Ultimately, Mother decided to stay. When the court asked Mother if she would "adhere to the rules of this courtroom[,]" Mother responded, "I don't care. Can we just go? Hurry up. I got to go. My kids and my grandmother [are] out there . . . . I just said okay, I don't care. Can we move on?" On the last day of the hearing (August 30, 2023), when the parties were scheduled to give closing statements, Mother showed up about an hour late, purportedly because of transportation issues. Although the record does not reflect other instances of Mother's late arrivals, disinterest, or sleeping, we defer to the court's findings on the issue.

We now turn to Mother's claims of error regarding various statutory factors under FL § 5-323(d).

[7] The court made these findings in assessing factor (d)(2)(iv) (whether additional services would be likely to bring about a lasting parental adjustment so that the child could be returned to the parent). Mother, however, does not challenge the court's assessment of this factor.

Factor (d)(1)(ii)

Mother claims that the court made various errors under factor (d)(1)(ii)—the extent, nature, and timeliness of services offered by a local department to facilitate reunion of the child and parent. *First*, she argues that the court erred in finding that she was late to two pre-pandemic visits, resulting in their cancellation when it was only one. We agree. Ms. Saiyard-Tambe's testimony established that four visits were scheduled in February 2020. The first visit on February 6 had to be cancelled because the caseworker could not attend. The other three visits were scheduled on February 14, 18, and 25. The visit took place as planned on February 14; Mother was late to the February 18 visit, resulting in its cancellation; and Mother did not show up on February 25. The court clearly erred in finding that the February 6 visit "was cancelled due to Mother running late" and that the visit scheduled on February 18, 2020, was cancelled because Mother was "again late." The evidence established that Mother's lateness caused only one of the February scheduled visits to be cancelled. On remand, the court shall issue a corrected finding.

Second, Mother claims that the court erred in finding that Mother's "first and complete visit" with the Twins occurred on February 14, 2020, and that she did not see the Twins again until September 2022. This is because the evidence established that Mother saw the Twins while they were in Great Aunt's custody in early 2021. We find no error here. This factor relates to the services *offered by the Department* to facilitate reunion. As we understand the court's written opinion, these findings relate to visits facilitated by the Department for which Mother appeared.

Third, Mother contends that the court erred by finding that she "thwarted" "attempts to place [the Twins] with relatives" by "repeated failures" to maintain consistent contact with the Department. We question whether the court's statement should be interpreted this way. Mother bases her interpretation on the introductory paragraph of the section in the court's written opinion that assessed factor (d)(1)(ii):

> The [c]ourt finds that [the Department] made meaningful efforts to facilitate reunification between Mother and [the Twins]. These efforts included attempts to place [the Twins] with relatives. Despite Mother's argument to the contrary, her repeated failures to maintain consistent contact with the agency both thwarted these efforts and delayed reunification efforts.

The court then recounted Mother's failure to make herself available for Department-facilitated visits and FIMs. Separately, the court summarized the Department's efforts to place the Twins with relatives and why placement with the relatives did not succeed. These reasons were unrelated to Mother's failure to maintain contact with the Department. When considering the entire context, it seems that the court associated Mother's lack of consistent contact with the Department with her failure to participate in Department-facilitated visitation and FIMs rather than with the Department's attempts to place the Twins with relatives. On remand, the court shall clarify its finding in this regard.

Fourth, Mother contends that the court "gave insufficient consideration" to the "Department's efforts *vel non*," to place the Twins with Great Grandmother. According to Mother, this was "one of the central issues" during the TPR hearing. Mother disputes that the Department made adequate or reasonable efforts to place the Twins with a relative. She suggests that the Department had already decided to place the Twins with a non-relative

soon after they were removed from Great Aunt's custody in April 2021, despite the availability of Great Grandmother as a potential resource. We disagree.

The court adequately considered the Department's efforts to place the Twins with Great Grandmother and other relatives and detailed these efforts in its written opinion. It explained that the Department initially advocated for the placement of the children in Great Aunt's home, and the Twins were, in fact, placed there. Because of this placement, the court changed the permanency plan to placement with a relative. But the placement with Great Aunt failed and the children had to be removed from her home. The court explained that although Great Grandmother was cleared as a resource, the Twins could not be placed there with Half-Brother because of "his aggression towards them." The court adequately considered the Department's efforts to place the Twins with Grandmother and did not clearly err in finding that its efforts to place the Twins with relatives were sufficient.

Factor (d)(2)(ii)

Under factor (d)(2)(ii)—the parent's contribution to a reasonable part of the child's care and support—Mother claims that the court erred in two ways. *First*, Mother asserts that, in finding no evidence that she made "meaningful contributions" to the Twins' support and care, the court ignored her testimony that she tried to support Great Aunt. We disagree. Although Mother testified that she gave an unspecified amount of money to Great Aunt during the brief period the children were in her care, the court was free to disregard Mother's testimony, and, in any event, there was no evidence that the amount of the contribution was "meaningful."

Second, Mother argues that the court should not have given this factor any weight, because the court made no finding that she was financially able to provide support. The statute requires the court to consider "the parent's contribution to a reasonable part of the child's care and support, if the parent is financially able to do so[.]" FL § 5-323(d)(2)(ii). Although it is unclear to what extent the court relied on this factor in reaching its conclusion, on remand, if the court finds this factor applies, the court shall determine whether Mother is financially able to contribute to the care and support of the Twins.

Factor (d)(3)(iii)

Under factor (d)(3)(iii)—whether the parent subjected the child to chronic abuse, chronic and life-threatening neglect, sexual abuse, or torture—Mother argues that the court erred in finding that Mother subjected the Twins to the "potential of chronic neglect" based on her failure to properly feed one of the Twins when he was an infant. She asserts that the appropriate statutory factor to be considered is not "potential chronic neglect" but rather "chronic and life-threatening neglect[.]" FL § 5-323(d)(3)(iii). Aside from the statutory language, she argues that her past conduct does not inform how Mother would treat the child now.

We agree that the statute speaks in terms of "chronic and life-threatening neglect," not "potential chronic neglect." On remand, the court shall reassess this factor in terms of the language used in the statute. As to Mother's point about the court's consideration of past conduct, "[i]t has long been established that a parent's past conduct is relevant to a consideration of the parent's future conduct." *In re Adriana T.*, 208 Md. App. 545, 570 (2012).

Factor (d)(4)(i)

Under factor (d)(4)(i)—the child's emotional ties with and feelings toward the child's parents, the child's siblings, and others who may affect the child's best interests significantly—Mother argues that (1) the court "undervalued" the Twins' ties to their family and overvalued ties to the foster caregivers; (2) the court incorrectly found that the Twins "have had virtually no contact with [Half-Brother]"; and (3) the court did not consider whether the Twins had feelings toward family members other than Mother and Half-Brother, including Great Grandmother and Half-Sister. For the most part, we agree.

Part of the (4)(i) factor concerns ties to the child's siblings. While the court did not err in finding that the Twins "have had virtually no contact with [Half-Brother,]" the finding did not address the Twins' "emotional ties with and feelings toward" the Half-Brother. A caseworker's note entered in February 2021, when the three were in Great Aunt's custody, indicated they were "reunited and very happy together." Another note entered in December 2021 showed that the three visited and "were having fun playing and talking together" and that Half-Brother "hugged his sibling a lot during the visit." Great Grandmother testified that she observed no fighting between the Twins and Half-Brother. Other evidence, however, established that Half-Brother was removed from the foster care home and placed in a different home because of reports that he was "kicking, biting, and pushing" the Twins. The court did not resolve the conflicting evidence of the Twins' relationship with Half-Brother.

Nor did the court mention the Twins' relationship with Half-Sister. Mother testified that Half-Brother and the Twins had a "perfect relationship. Just like their sister do[es.]" A

caseworker's note about the family group visit with the Twins on September 16, 2022, indicated that Half-Sister and Half-Brother were present and that the visit "went well[.]" Great Grandmother testified about other visits the Twins had with their half-siblings, noting that those visits were "nice. . . . I got snacks and juice. We played. They all three played . . . including their sister. They all played. They had fun." Despite the evidence, the court did not make any findings about the Twins' emotional ties to Half-Sister.

Similarly, the court made no findings about the last part of the (4)(i) factor concerning ties to "others who may affect the child's best interests significantly." While the court did not err in its findings about the Twins' emotional ties to the H. family, it did not appear to consider other persons who may significantly affect their best interests. Mother suggests that Great Grandmother is one such person who may significantly affect the Twins' best interest and should have been considered under this factor. On remand, the court shall consider whether persons other than Mother, the half-siblings, and the H. family, may significantly affect the Twins' best interest. Even if the court concludes there are no other such persons, it still must make findings of "the non-existence of facts where appropriate[.]" *In re Adoption/Guardianship No. 95195062/CAD in Cir. Ct. for Balt. City*, 116 Md. App. at 457.

Factors (d)(4)(iii) and (iv)

Finally, Mother challenges the court's findings under factors (d)(4)(iii) (the child's feelings about the severance of the parent-child relationship) and (d)(4)(iv) (the likely impact of terminating parental rights on the child's well-being). Mother claims that the court engaged in "pure speculation" in finding that the Twins were not likely to have strong

feelings about the severance of the parent-child relationship and that terminating Mother's parental rights would not have a meaningfully negative impact on their well-being. We disagree.

The evidence established that the Twins were only one month old when they were taken into care, and Mother had seen them only a handful of times in the intervening three and a half years. Mother also acknowledged during her testimony that she had no bond with the Twins. Thus, the court's findings under these two factors were supported by competent and material evidence and were not clearly erroneous.

II.

EXCEPTIONAL CIRCUMSTANCES

Mother contends that the court erred in failing to explain how its findings constituted exceptional circumstances that would make the continuation of the parental relationship detrimental to the Twins' best interest. We agree.

After the juvenile court in a TPR case makes specific findings about each factor in FL § 5-323(d), the court must then:

> *determine expressly whether those findings suffice* either to show an unfitness on the part of the parent to remain in a parental relationship with the child or *to constitute an exceptional circumstance that would make a continuation of the parental relationship detrimental to the best interest of the child, and, if so, how.*

In Re Adoption/Guardianship of Rashawn H., 402 Md. 477, 501 (2007) (emphasis added). *Accord C.E.*, 464 Md. at 53.

Here, the court expressed its ultimate determination as follows: "Having considered each factor enumerated in § 5-323(d) of the Family Law Article, the [c]ourt finds, by clear

and convincing evidence, that exceptional circumstances exist to overcome the presumption that [the Twins'] best interests are served by the continuance of the parental relationship."

We conclude that the court erred as a matter of law because it did not express *how* its findings led to its ultimate determination. *See Rashawn H.*, 402 Md. at 504–05 (vacating an order terminating parental rights where the juvenile court failed to relate findings under FL § 5-323(d) to any exceptional circumstances sufficient to rebut the presumption favoring continuation of the parental relationship). As in *Rashawn H*., the court, on remand, must "explain clearly how and why" "any amalgam of [its] findings leads to a conclusion that exceptional circumstances exist sufficient to rebut the presumption favoring the parental relationship[.]" *Id*. at 505. In its discretion, the court may receive additional evidence considering the time that has elapsed between the TPR hearing and the filing of this opinion. *See id*.

CONCLUSION

We decline Mother's request to reverse the circuit court's decision to terminate parental rights. Apparently, the court believed terminating parental rights was in the Twins' best interest. But the court's errors or omissions have led us to "speculate as to whether the trial court has fulfilled its obligations" to consider the array of factors under the statute, which in turn leads us to question the validity of its decision to terminate parental rights. *See In re Adoption/Guardianship No. 95195062/CAD in Cir. Ct. for Balt. City*, 116 Md. App. at 457. We recognize that in addressing the errors or omissions on remand, the court may reach the same conclusion as it did previously.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS IN CONFORMANCE WITH THIS OPINION. COSTS TO BE SPLIT EVENLY BETWEEN APPELLANT AND APPELLEE, BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES.